

April 29, 1949

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ARIZONA ATTORNEY GENERAL

Honorable Phil A. Isley
State Dairy Commissioner
State House
Phoenix, Arizona

Dear Mr. Isley:

In reply to your letter of April 28, 1949 wherein you ask:

"Is the addition of flavoring to and the freezing of a prepared ice cream mix a manufacturing operation?"

the Legislature, by Sub-section Q of Section 50-901, A.C.A. 1939 has defined milk products manufacturer as:

"(q) 'Milk products manufacturer' is a person engaged in the business of buying or receiving milk or milk products either directly or indirectly from the producer or manufacturer thereof for the purpose of converting such milk or milk products into other such products by a manufacturing process."

Ice cream mix is a milk product, Sub-section B, Section 50-901 supra. The process of adding flavoring to the ice cream mix, then freezing it, converts the milk product into an entirely different product by name as well as into a usable product.

Webster's International Dictionary defines manufacture as "to work, as raw or partly wrought materials, into suitable forms for use". This ice cream mix is a manufactured product of partly wrought materials, and when there are these additions to the ice cream mix, such as flavoring and then the process of freezing, the ice cream mix is definitely changed into suitable form for use.

Volume 26 of Words and Phrases at Page 408, quoting on the case of City of Louisville v. Ewing Von Allmen Dairy Co., 105 S.W. 2d 801, says:

"'Manufacture' implies a change. There must be transformation; a new and different article must emerge, having a distinctive name, character, or use."

It is generally considered that the entire dairy and dairy products law as contained in Article 9 of Chapter 50, A.C.A.

Phil A. Isley
State Dairy Commissioner

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1939, is for the purpose of securing to the public safe, clean, edible dairy products for consumption. In this connection, we would like to quote a portion of Section 50-907, entitled Milk Products Manufacturer:

"Any person desiring to engage in the manufacture of milk products shall make written application to the commissioner for a license. The application shall be accompanied by a fee of fifty dollars, and shall be in such form as the commissioner may prescribe. Upon the filing of the application the commissioner shall examine the same and if it appears that the applicant has complied with all provisions of law, a temporary license for a period of not to exceed one hundred and twenty days shall be issued, which temporary license shall entitle the applicant to engage in the manufacture of milk products until such time as the commissioner shall have made an inspection as provided by subsection (b)."

This strongly implies that anyone who has to do with the changing of a milk product into something else should be very rigidly inspected, not for the purpose of obtaining a fee, but for the purpose of knowing that the individual is manufacturing a product in a proper, sanitary manner, and that the product will be good for human consumption. It is regrettable that the small fellow is required to pay the same fee as the large one, but we cannot make laws otherwise.

It is, therefore, our opinion that the answer to your question is "yes".

Respectfully,

FRED O. WILSON
Attorney General

CHAS. ROGERS
Assistant Attorney General

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